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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

DARRELL HOLMQUIST, LINDA
HOLMQUIST, RANDY HENRY,
BRANDON HENRY, and KENT
TAYLOR,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

Cause No.

COMPLAINT

COMES NOW Plaintiffs, by and through their attorney, and for their Complaint against Defendant, allege as follows:

1. In August of 2010, the U.S. Forest Service ignited the Davis 5 Prescribed Fire southeast of Lincoln, Montana. The area surrounding the prescribed fire is surrounded by private property owners. The prescribed fire grew out of control, causing the destruction of Plaintiffs' property. Plaintiffs, by this action, seek reimbursement for the fire damages which the Forest Service caused.

2. Plaintiffs DARRELL HOLMQUIST, LINDA HOLMQUIST, RANDY HENRY, BRANDON HENRY, and KENT TAYLOR are each and all the owners of property in Lewis and Clark County, Montana. Specifically, Plaintiffs DARRELL and LINDA HOLMQUIST own approximately 59 acres at Township T13NR07W, Section 23, Lewis and Clark County, Montana. Plaintiff RANDY HENRY owns approximately 90 acres designated as lot 42 embracing a portion of T.13N., R. 7W., in Lewis and Clark County, Montana. Plaintiff BRANDON HENRY owns approximately 5 acres at The Patanopa Millsite Claim, Survey No. 7744-B, embracing a portion of T.13 N., R. 7W., Lewis and Clark County, Montana. Plaintiff KENT TAYLOR owns approximately 142.6 acres at Township T13NR07W, Section 15, Lewis and Clark County, Montana.

3. The claims herein are brought against the United States pursuant to the Federal Tort Claims Act (28 U.S.C. §2671, et seq.) and 28 U.S.C. §§1346(b)(1), for money damages as compensation for loss of property that were caused by the negligent and wrongful acts and omissions of employees of the United States Government while acting within the scope of their offices and employment, under circumstances where the United States, if a private person, would be liable to the Plaintiffs in accordance with the laws of the State of Montana.

4. Venue is proper in the Helena Division because the pertinent facts occurred in Lewis and Clark County, Montana.

5. On or about August 25, 2010, the Forest Service ignited the Davis 5 Prescribed Fire southeast of Lincoln, Montana (the “Davis Fire”) on Forest Service land. The Davis Fire was started for fuel reduction purposes. The area adjacent to the prescribed fire is surrounded by Plaintiffs’ private property. The prescribed fire grew out of control, causing the total destruction of Plaintiffs’ property.

6. The Davis Fire took place under extreme weather conditions consisting of gusty winds and very warm temperatures. In fact, the prescribed fire was set during a fire weather warning/red-flag warning. The Forest Service failed to follow its own guidelines for proper prescribed fire implementation in starting the Davis Fire.

7. The Forest Service failed to notify local fire fighters or adjacent private property owners- including Plaintiffs- of the prescribed fire. Had the Forest Service notified Plaintiffs, they would have been able to take measures to protect their properties and/or ensured that the Forest Service took measures to do so.

8. The prescribed fire instituted by the Forest Service used a different fuel model from that reflected in the fire plan. The Forest Service, in the manner in which it set and conducted the prescribed fire, failed to exercise proper

discretion or arguably “reasonable” judgment the Forest Service failed to notify private landowners or local fire fighters.

9. Plaintiffs have suffered and will suffer damages to restore their respective properties to pre-fire condition. Plaintiffs seek damages under Montana law consistent with the Montana Supreme Court’s decision in *Lampi v. Speed*.

10. Pursuant to Montana law, the Forest Service, as the responsible party for the Davis Fire, is strictly liable to Plaintiffs for all damages caused by the fire. Mont. Code Ann § 50-63-103.

11. The Forest Service was negligent in that it owed a duty to not set fire to and destroy Plaintiffs’ private property through a prescribed fire and/or owed a duty to advise private property owners if and when it intended to light a prescribed fire and/or to not deviate from the fire plan authorized for the Davis Fire. The Forest Service breached its duties by failing to advise local firefighters and property owners of the impending fire, by failing to follow its own guidelines for proper prescribed fire implementation in starting the Davis Fire, and by deviating from the fire plan established for the prescribed burn.

12. The Forest Service’s failure to properly conduct the Davis Fire caused damages and losses to Plaintiffs in an amount to be determined at trial.

13. Under Montana law, had the Forest Service been a private citizen, it would be liable for damages for setting or leaving a fire that spreads and damages

or destroys property of any kind not belonging to the person is liable for all damages caused by the fire. Pursuant to the Federal Tort Claim Act, the Forest Service, by and through the United States, is liable for all damages and losses to Plaintiffs in an amount to be determined at trial.

WHEREFORE Plaintiffs pray for judgment against Defendant for all damages to which they are entitled in such categories and in such amounts as deemed appropriate by the jury and this Court.

DATED this 12th day of June, 2012.

BISHOP & HEENAN

/s/ John Heenan
John Heenan
Attorney for Plaintiffs